

**13-37-101. Title.**

This chapter is known as the "Notice of Intent to Sell Nonpublic Personal Information Act."

Enacted by Chapter 97, 2003 General Session

**13-37-102. Definitions.**

As used in this chapter:

(1) "Affiliate" means a person that controls, is controlled by, or is under common control with:

- (a) a commercial entity; and
- (b) (i) directly; or
- (ii) indirectly through one or more intermediaries.

(2) (a) Subject to Subsection (2)(b), "commercial entity" means a person that:

- (i) has an office or other place of business located in the state; and
- (ii) in the ordinary course of business transacts a consumer transaction in this state.

(b) "Commercial entity" does not include:

- (i) a governmental entity; or
- (ii) an entity providing services on behalf of a governmental entity.

(3) "Compensation" means anything of economic value that is paid or transferred to a commercial entity for or in direct consideration of the disclosure of nonpublic personal information.

(4) (a) "Consumer transaction" means:

(i) a sale, lease, assignment, award by chance, or other written or oral transfer or disposition:

(A) that is initiated or completed in this state; and

(B) of:

(I) goods;

(II) services; or

(III) other tangible or intangible property, except securities and insurance or services related thereto; or

(ii) a transaction:

(A) that is initiated or completed in this state; and

(B) that constitutes credit offered or extended by a commercial entity to a person primarily for personal, family, or household purposes.

(b) "Consumer transaction" includes:

(i) the use of nonpublic personal information in relation to a transaction with a person if the transaction is for primarily personal, family, or household purposes; and

(ii) with respect to any transaction described in Subsection (4)(a):

(A) an offer or solicitation;

(B) an agreement;

(C) the performance of an agreement; or

(D) a charitable solicitation as defined in Section 13-11-3.

(c) "Consumer transaction" does not include a transaction related to real property.

- (5) (a) "Nonpublic personal information" means information that:
- (i) is not public information; and
  - (ii) either alone or in conjunction with public information, identifies a person in distinction from other persons.
- (b) "Nonpublic personal information" includes:
- (i) a person's Social Security number;
  - (ii) information used to determine a person's credit worthiness including a person's:
    - (A) income; or
    - (B) employment history;
    - (iii) the purchasing patterns of a person; or
    - (iv) the personal preferences of a person.
- (6) "Public information" means a person's:
- (a) name;
  - (b) telephone number; or
  - (c) street address.
- (7) (a) Subject to Subsection (7)(b), "third party" means a person other than the commercial entity that obtains nonpublic personal information.
- (b) "Third party" does not include an affiliate or agent of the commercial entity that obtains nonpublic personal information.

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**13-37-201. Required notice.**

- (1) (a) In accordance with this section, a commercial entity shall provide the notice described in this section to a person if:
- (i) the commercial entity enters into a consumer transaction with that person;
  - (ii) as a result of the consumer transaction described in this Subsection (1)(a), the commercial entity obtains nonpublic personal information concerning that person; and
  - (iii) the commercial entity intends to or wants the ability to disclose the nonpublic personal information:
    - (A) to a third party; and
    - (B) for compensation; and
    - (iv) the compensation described in Subsection (1)(a)(iii)(B):
      - (A) is the primary consideration for the commercial entity disclosing the nonpublic personal information;
      - (B) is directly related to the commercial entity disclosing the nonpublic personal information; and
      - (C) is not compensation received by the commercial entity in consideration of a transaction described in Subsection (5).
- (b) For purposes of this chapter, a commercial entity is considered to have obtained information as a result of a consumer transaction if:
- (i) the person provides the information to the commercial entity:
    - (A) at any time during the consumer transaction; and
    - (B) at the request of the commercial entity; or

(ii) (A) the commercial entity otherwise obtains the information; and  
(B) but for the consumer transaction, the commercial entity would not obtain the information.

(2) The notice required by Subsection (1) shall be given before the earlier of:

(a) the point at which the person is requested to provide the nonpublic personal information; or

(b) the commercial entity otherwise obtains the nonpublic personal information as a result of the consumer transaction described in Subsection (1)(a).

(3) The notice required by Subsection (1):

(a) shall read substantially as follows: "We may choose to disclose nonpublic personal information about you, the consumer, to a third party for compensation.";

(b) may be made:

(i) orally, if the consumer transaction itself is entirely conducted orally; or

(ii) in writing, if the notice is written in dark bold; and

(c) shall be sufficiently conspicuous so that a reasonable person would perceive the notice before providing the nonpublic personal information.

(4) This chapter does not apply to:

(a) a commercial entity that is subject to a federal law or regulation that governs the disclosure of nonpublic information to a third party; or

(b) a covered entity as defined in 45 C.F.R. Parts 160 and 164.

(5) Notwithstanding the other provisions of this section, a commercial entity is not required to provide notice under this section if:

(a) the disclosure of the nonpublic personal information is related to the third party providing to the commercial entity:

(i) services, including business outsource services;

(ii) personal or real property; or

(iii) other thing of value; and

(b) compensation received by the commercial entity as part of the transaction is received by the commercial entity for or in consideration of the transaction described in Subsection (5)(a).

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**13-37-202. Disclosure of nonpublic personal information prohibited without notice.**

(1) A commercial entity may not disclose nonpublic personal information that the commercial entity obtained on or after January 1, 2004, as a result of a consumer transaction if the commercial entity fails to comply with Section 13-37-201.

(2) This chapter may not be interpreted as authorizing a commercial entity to disclose nonpublic personal information to a greater extent than the commercial entity is otherwise permitted to disclose nonpublic personal information.

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**13-37-203. Liability.**

(1) A person may bring an action against a commercial entity in a court of

competent jurisdiction in this state if:

- (a) the commercial entity enters into a consumer transaction with that person;
- (b) as a result of the consumer transaction described in Subsection (1)(a), the commercial entity obtains nonpublic personal information concerning that person; and
- (c) the commercial entity violates this chapter.

(2) In an action brought under Subsection (1), a commercial entity that violates this chapter is liable to the person who brings the action for:

- (a) \$500 for each time the commercial entity fails to provide the notice required by this section in relation to the nonpublic personal information of the person who brings the action; and

- (b) court costs.

- (3) A person may not bring a class action under this chapter.

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